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Supreme Court, U.S.
FILED

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IN THE SUPREME COURT OF THE
UNITED STATES
October term 2000

EUGENE JONESON-PETITIONER
VS.
THE PEOPLE OF THE STATE OF
ILLINOIS

IN THE INTEREST OF
LUELLA JONESON

On Petition For Writ of Certiorari to the United States Court For the 1st District of Illinois

PETITION FOR WRIT OF CERTIORARI OF EUGENE HERMAN JONESON APPENDIXES A1- F

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Date August 8th, 2001

62 pp

In The Appellate Court of Illinois
First Judicial District

In re L.J., a Minor,	)
(THE PEOPLE OF THE STATE	)NO. 98-3336
OF ILLINOIS)	)
Petitioner-Appellee	)
V.	)
Eugene J.,	)
Respondent-appellant	)

ORDER

Having examined the record and reviewed the briefs, this court being of the opinion that oral argument is not necessary;

IT IS HEREBY ORDERED that the above captioned case will be considered without oral argument, pursuant to Supreme Court Rule 352(a) as amended.

Order Entered
June 27th, 2000
Appellate Court,
1st District

Justice -s/ P.J. Theis
Justice s/ J. Hartman
Justice s/ J. Quinn

"Appendix A-1"

Fifth Division

June 30, 2000

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the discretion of the same

1-98-3336

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re L. J., a Minor,	)
(THE PEOPLE OF THE STATE	) NO.94 Ja 1107
OF ILLINOIS)	)Appeal from
Petitioner-Appellee	)The Circuit
V.	)Court of Cook
Eugene J.,	)County
Respondent-appellant	)Honorable
	) Mary A .Mulhern
	) Judge Presiding

ORDER

Following separate hearings, the circuit court found that respondent Eugene . Was an unfit parent and that it was in the best interest of his minor daughter, L.J. to terminate respondent's parental rights and allow L. J. to be adopted by her foster parents. On appeal, respondent contends, pro se, that the court's finding that he was unfit was against the manifest weight of the evidence, and that the State failed to present clear and

convincing evidence that it was in L. J.'s best interest for respondent's parental rights to be terminated.

Respondent's daughter, L. J. was born January 30, 1994, at the apartment that respondent shared with he child's mother. The circuit court awarded temporary custody of the infant to the State on February 14, 1994, after finding that both respondent and L. J.'s mother were mentally ill and unable to care for her. On March 28, 1995, the court found that L. J> was neglected due to an injurious environment. She was adjudicated a ward of the court on June 21, 1995, due to the court's finding that respondent was unable to care for, protect, train, or discipline her. A petition for termination of respondent's parental rights was filed on May 10, 1996, alleging that both parents failed to make reasonable progress toward L. J.'s return home.

At the fitness hearing, Julie Yalowitz testified that she was a child welfare specialist with Catholic Charities. L. J.'s case was assigned to her in January 1995. She testified that L. J. Came into State care in February 1994, after being born at home. Respondent and L. J.'s mother had two older daughters, who were placed in foster care after their mother abandoned them. When the Department of Children and Family Services (D.C.F.S.) was made aware of L. J. 'S birth, a caseworker went to their home and found that the child had been born at home, was being fed adult food, and was therefore at risk of harm

The first DCFS service plan for this case was established in November 1994. The goal of that plan was long-term foster care due to respondent' lack of

progress and the status of his older children's cases. In March 1995, L. J. was adjudicated a ward of the court after she was found to have been neglected due to exposure to an injurious environment, and another service plan was created in April 1995 The April 1995 service plan also recognized long-term foster care as the goal of the plan. The tasks outlined in the April plan were the same tasks outlined by the original plan. Under that plan, respondent was to attend Alcoholics Anonymous (AA).meetings, counseling sessions, and a parenting class. The plan was to address issues related to respondent's difficulty providing structure for L. J. and engaging her in age-appropriate activities. When the second service plan was created, respondent was rated unsatisfactory on the goals of the first plan because he was no regularly attending therapy sessions and was not addressing the problems in the first plan

Yalowitz also testified that she observed respondent during visits with L. J. Respondent was initially allowed to visit L. J. twice a month. Yalowitz testified that respondent had difficulty engaging L. J .in age-appropriate activities, and would bring an overwhelming number of games and toys to the visits. She said that many of the games and toys were not age appropriate, and that respondent would feed L. J. constantly during visits. Yalowitz testified that respondent was not able to change L. J.'s diaper on "numerous" occasions, nor was he able to read L. J.'s verbal or nonverbal cues and address her physical or emotional needs. She testified that when L. J. cried, respondent often made statements like, "I'm frustrated

too, that we can't be together all the time; I know that you don't want to leave me" instead of identifying the reason that L. J. was crying

The next service plan was entered into in October of 1995. The goal of that service plan was also long-term foster care because respondent again failed to make significant progress on the tasks outlined in the April 1995 service plan. Though respondent had begun counseling sessions, his visits with L. J. continued to be "chaotic and disorganized" She note that during one visit, respondent left a sharp knife within L. J.'s reach after using it to cut food. L. J.'s older sisters moved the knife out of her reach. During another visit, respondent began to place a plastic bag over L. J.'s head to use as a bib. When Yalowitz stopped him, he said that he was going to cut a whole in the bag so it would fit the baby's head. Yalowitz testified. Yalowitz testified that when she tried to direct respondent on safety issues, he became hostile and argumentative, and would often say "they just don't let us have fun*** I always have to clean up because we can/t have any fun." Respondent was not able to assimilate the advice given to him during visits, and continued making the same mistakes in following visits. Yalowitz testified the L. J.'s safety was continually compromised during her visits with respondent due to his failure to properly supervise her.

Another service plan was entered into in April 1996. The goal of the plan remained long-term foster care. Yalowitz testified that it was decided that the case should proceed toward termination

of respondent's parental rights soon after that plan was created. That decision was fueled, in part by a parenting assessment test completed by respondent which concluded that no amount of intervention would be sufficient to help respondent with his parenting deficiencies

Though respondent continued to attend counseling sessions, he began seeing a different counselor because his original counselor told him that she would not recommend that the children be returned to his care. Respondent was asked to leave the parental support group that he was attending due to inappropriate, and sometimes hostile behavior, but was then referred to a parenting skills class which he completed. However, Yalowitz testified that he failed to show any improvements in his parenting abilities

In September 1996, the visiting schedule was changed so that respondent saw L .J. only once a month. Another service plan was entered into in October 1996, with the goal remaining long-term foster care. Respondent continued to bring age-inappropriate toys to the visit.

He continued to become hostile when Yalowitz gave him directives during the visits and often displayed hostility against the caseworkers in front of the children. Yalowitz testified that this occurred at more than one-half of the visits. As L. J.'s needs became more complex, respondent had difficulty meeting her needs and keeping her activities controlled. L. J.'s sisters were often more responsible for supervising her than respondent was. Yalowitz testified that she saw no

progress in respondent's parenting skills from the time that she was assigned to the case to the time that she stopped working on the case, in September 1997.

During cross-examination, Yalowitz admitted that respondent completed all of the services to which he was referred, but noted that he failed to show any significant progress in his parenting skills despite having completed the services. Yalowitz also conceded that respondent's therapist felt he was making progress during their sessions, but reiterated that they saw no progress in his ability to parent L. J. during the visits with her.

Minna Green, respondent's first counselor, testified next. She stated that she was a social worker and psychotherapist with the Salvation Army Family Services. Respondent was her client from July 1990 through July 1995. He requested services from her agency after his older daughters were placed in foster care. She observed respondent interact with his older daughters, and reported observing many of the same problems that Yalowitz noted. She stated that though she initially felt that respondent was making progress in his parenting skills, at some point he seemed to regress. She said that when she gave him suggestions, he seemed to feel that she was criticizing him. She noted that he had problems setting limits with the children, that he seemed oblivious to safety issues, and would get so absorbed in a task that he did not notice what the children were doing. Green testified that she remembered him telling her that he thought that children should " learn by themselves what's dangerous and

what isn't and that she noticed that when the children were in danger, he did not react. She had to discuss with him what kind of toys were age-appropriate for the children, but noted that he followed her suggestions

Green said that she was never sure that he fully understood how traumatic it could be for the older children to have to leave the foster home that they had lived in for years. She did not think that respondent was able to empathize with his children. She also found that respondent became less willing to abide by her suggestions and was getting angry and defensive. She testified that at the time that she stopped seeing him, she did not believe that the children should be returned to his custody because he lacked adequate judgement and could not empathize with them. Respondent stopped seeing her because she told him that she could not be an advocate for the return of the children to his custody.

Christine Foley, a social worker with Catholic Charities, also testified. She stated that she was initially assigned to work on the older girl's cases in February 1995. In September of 1997, L .J's case was assigned to her. She testified that she observed visits between L. J. and respondent, but saw no improvement in his ability to parent during the time the she was assigned to the case. She said that respondent was resistant to directives during visits, and was often became hostile toward her. Foley remembered that during one visit, he called her a "Nazi" in front of the children. She testified that he had difficulty engaging the children during visits, and often brought so many toys and activities that the visits became chaotic. He did not always monitor L. J.

while she was eating, and he would often have to be directed as to how to behave with the children.

Foley testified that she did not believe that he met the minimum parenting standards set by DCFS, was very much absorbed in his own feelings as opposed to the children's feelings, and had difficulty relating to his daughters emotionally. He was not able to provide any structure during the visits. She testified that despite reports from respondent's therapist that claimed that he was making progress, she saw no evidence of progress during his visits with L. J.. While she noted that he made attempts to make progress in his parenting skills, she felt that he displayed deficiencies in creating a safe environment for L. J., being attentive to her physical and emotional needs, and monitoring her activities.

Kathleen Pesek, a child development specialist with Thresholds Mother's Project, testified that she was part of a team that evaluates the parenting skills of DCFS clients who may be suffering from mental illness. This "parenting assessment team" consists of Pesek, a psychiatrist, and a child psychologist. The team reviews the entire DCFS file, interviews the parent individually, and then observes the parent with the child. Respondent was referred to the assessment team through DCFS, and the team completed an evaluation of him in February 1996.

After interviewing respondent, Pesek believed that he was unable to empathize with the children. She testified that he seemed more focused on his needs than on the children's needs. Pesek testified that at one

could handle the responsibility of parenting, and the children might be better of with their foster parents. She read excerpts from the team's report which indicated that they found that respondent experienced difficulty in taking another's perspective, setting appropriate limits, knowing how to interact appropriately with his children, and that he often attributed adult=like motivations to his children's behavior. She noted that he brought many gifts to the visits, despite the children's requests that he not do so.

Pesek also testified that respondent was not able to engage his children. During her observations of respondent with L. J. and the two older children, she noticed that the children "basically avoided him" and demonstrated an " insecure attachment", they relied upon one anther. She remembered that during one visit L. J. was "getting into" the plastic knife and bags that were in the room. Respondent did not notice, and one of the older children had to take them away from L. J.

Pesek also testified that, during her interview with respondent, he admitted to losing his patience and striking a toddler for whom he was babysitting. She testified that the questionnaires that respondent filled out indicated that he had a tendency to be extremely overprotective of older children, stating that a 15 year old should never be left alone, and that a 16 year old should have a parent with them 24 hours a day. Pesek testified that the team found that if the children were returned to respondent, there would be a high risk for neglect, and possible abuse. The team concluded that

it was highly unlikely that respondent's emotional health would change enough to allow him to parent adequately. She testified, "[respondent] would need individual psychotherapy that was so intense and so prolonged and protracted that to think that he would be able to make demonstrable progress in a reasonable amount of time to benefit his children is extremely unlikely." She noted that though her team disagreed with Tod Harrison, who was respondent's therapist, Harrison had never seen respondent interact with the children.

Finally, Pesek noted that the team diagnosed respondent as suffering from a "schizotypal personality disorder" She testified that this would interfere with his ability to parent in that it would reduce his level of cognitive and perceptive functioning.

Al Lungowski, respondent's AA sponsor, testified on respondent's behalf. He described AA's 12 -step program. However, he was not allowed to testify as to respondent's progress in the program because he was not respondent's sponsor prior to the time that the State filed the petition to terminate respondent's parental rights. He stated that he had only been respondent's sponsor for the six months preceding the hearing.

Dr. Martin Blackman, the director of pediatric neuropsychological services at Columbia Grant Hospital, also testified for respondent. He stated that he evaluated respondent in June 1997, and made a diagnosis of alcohol dependency in remission. He testified that he did not see respondent as having the

same personality disorder which Pesek's team diagnosed. He said that tests administered during his psychological evaluation of respondent indicated that he had an above average I.Q. Though Dr. Blackman indicated that respondent showed a strong desire to be a father, Dr. Blackman acknowledged that he did not evaluate respondent's parenting ability.

Todd Harrison, respondent's therapist, testified that he was a licensed clinical social worker for the Community Counseling Centers of Chicago. Respondent became Harrison's client in July 1995. At their first meeting, they established several issues for respondent to work on relating to how the children came into the State's care, his parenting, his feeling about the situation, and what respondent could do so that his children would be returned to him. Harrison also testified that Dr. Carolyn Childers a psychiatrist with his office, completed a psychiatric evaluation of respondent.

Harrison stated that respondent was never hostile or belligerent during their therapy sessions, and was always open to recommendations. They frequently discussed respondent's parenting skills, and ways to improve them. Harrison said the respondent reported progress in his visits with the children. Harrison also discussed respondent's parenting classes with him, so that they could review what he learned in the classes and how to apply what he learned to visits with the children. Harrison testified that he believed respondent progressed in his understanding of all of the issues they discussed. However, he admitted that he was in no

position to assess respondent's parenting skills because he never saw respondent interact with his children

Lynna Wilson testified that she met respondent at a parenting support group that they both attended. She stated that she and respondent both attended the parental support group until it was discontinued. However, she also admitted that she had never seen respondent interact with his children.

Finally, respondent testified on his own behalf. He stated that he completed all of the services that were recommended to him by Catholic Charities in an effort to have his children returned to him. He said that he applied the skills that he learned in parenting classes in his visits with the children. He stated that he never missed a visit with L. J., except those that were missed due to scheduling problems, weather, or L. J.'s illness. He testified that he never felt that his visits with her were chaotic and disorganized, that he always tried to make sure that the environment was safe for L. J., and that he did not participate in activities that were dangerous to her. He stated that he tried to be open to directives from the caseworkers, but that he stopped taking their directives when they tried to "[run] the visit," During cross-examination, respondent stated that though the trial court did not make a finding of unfitness in the older children's case, the appellate court reversed, finding that he was unfit

The circuit court found respondent unfit to parent L. J., stating: [Respondent's] inability to anticipate [L. J.'s] needs and to put her needs before his make him unable to parent and this inability has been

described throughout the case as being unable to read [L. J.'s] nonverbal cues. This means that [respondent] cannot be relied upon to meet [L. J.'s} needs for emotional support, nurturing or sometimes even her physical safety by anticipating or recognizing risks or problems that arise. The visitation history bears this out.

***

Every professional who has observed [respondent] with [L. J.] at visits, at evaluations, {and} in therapy *** concluded that he is unable to anticipate [L. J.'s] needs, to take care of them when they arise, and they conclude that he is unable} to assure that she will have the emotional and physical safety that she requires.

***

[T]here has not been measurable movement by [respondent] toward the goal of return home which is of such quality I would be able to return [L. J.] to his custody in the near future.

A subsequent hearing was held to determine whether it was in the child's best interest that respondent's parental rights be terminated and that she be adopted by her foster parents. At that hearing, Christine Foley testified that L. J. was placed with her foster parents in March 1994, shortly after she was removed form her parents' care. She stated that the foster parents met all of L. J.'s needs, and that L. J. had a loving relationship with the foster parents. She said that she did not see any evidence of a nurturing bond between respondent and L. J. during their visits, but that she did believe that

L. J. was bonded to the foster parents. She testified that the foster parents were in favor of continuing the relationship between L. J. and her siblings, that she did not fore see any problems in L. J.'s placement with the foster parents, and that she believed it would be in L. J.'s best interest to be adopted by the foster parents.

In addition to Foley's testimony, the State published portions of the parenting assessment teams evaluation, discussed by Kathleen Pesek at the first hearing, as well as a parental bonding assessment completed in February 1995 by Dr. Amy Anson at Michael Reese Hospital and Medical Center. The bonding assessment, much like Pesek's evaluation, indicated that L. J. had a strong "primary attachment" to her foster parents. While the report indicated that she used respondent as a source of comfort when she was distressed, Dr. Anson concluded :

"At this time, [respondent] is unable to provide the necessary interactional and emotional experiences [L .J.] needs for continued healthy development. Her basic safety may be compromised in {respondent's] care. ***[L. J.] clearly has a primary attachment with her current foster parents. She should continue to live in their home, and if possible be adopted by them, if and when it is determined that [L. J.} will not be returned to her biological father."

Respondent testified, stating that he believed that it would not be in L. J.'s best interest to sever his relationship with her and allow her foster parents to adopt her. He stated that he was the "central figure that's been with [L. J.] from the day that she was

born," and that while he believed that L. J. was bonded with her foster parents, the bond was not a "parent/child" bond but instead was a "caretaker" bond.

The circuit court concluded that it was in L. J.'s best interest to have respondent's parental rights terminated and tot be adopted by her foster parents. The court stated:

I believe that the evidence today convinces me that it is in]L. J.'s] best interest to have a permanent home with the [foster parents]. The testimony is clear that she is bonded to them; that she has lived there most of her life, from almost birth until she was four years *** and that to remove he would be very detrimental since she views this as being her primary care-giving family."

Respondent's appeals both the circuit court's finding that he was unfit and its order terminating his parental rights. He contends that the court's finding that he was unfit was against the manifest weight of the evidence, arguing that there was no clear and convincing evidence that he was unable to discharge his parental duties. He also contends the State failed to present clear and convincing evidence that it was in L. J. 's best interest for respondent's parental right to be terminated and for her to be adopted by her foster parents.

Respondent first contends that the court's finding that he failed to make reasonable progress toward L. J.'s return home was against the manifest weight of the evidence, he argues that L. J. was

originally taken into State care because of fears that he suffered from a mental illness. He claims that the State's decision not to pursue mental illness as grounds for termination of his parental rights is, in and of itself, indicative of progress.

However, while the State originally cited mental illness as justification for taking temporary custody of L. J., mental illness as was not alleged in the petition to terminate respondent's parental rights. During the hearing the circuit court indicated that the original allegations of mental illness were not at issue, and the court's decision clearly show that its finding was based upon respondent's failure to make reasonable progress with regard to deficiencies in his parenting skills. Respondent raised the same issues in his post trial motion, and the court specifically stated,"[i] n [L. J.'s] case *** you failed to make reasonable progress within a reasonable time. *** There was no finding with regards *** to any mental illness." Because a finding of mental illness did not form the basis of the trial court's fitness determination, respondent's argument is without merit.

Respondent also argues that the DCFS files entered into evidence at trial contained only those reports that were favorable to the State, that the caseworker reports were inaccurate, that the caseworkers were not trained in the basics of parenting skills, that the caseworkers were biased against him, that he was not offered the services he needed and that he did make reasonable progress.

Respondent's pro se arguments seem focused

on his beliefs that the caseworkers were involved in a conspiracy to terminate his parental rights and allow the foster parents to adopt L. J., without any regard to his ability to parent the child. This is not supported by any part of the record. Respondent was given many opportunities to show that he could make the kind of progress that would result in L. J.'s return home, but failed to do so. He participated in a number of parenting classes, and took full advantage of DCFS referrals for services, but could not apply what he learned in classes to his experience with his child

When the State filed the petition to terminate the respondent's parental rights, the Illinois Adoption Act stated that a parent could be found unfit if they failed to make reasonable progress toward the return of the child to their care within 12 months of the adjudication of neglect.. Ill 750 ILCS 50/1 (D0 (m) (west 1996) (amended by P.A. 90-28 such that the time period was shortened from 12 months to 9 months, effective June 25, 1997). The determination of whether progress is reasonable involves an objective standard based upon the amount of progress measured from conditions at the time custody was taken from the parent. At a minimum reasonable progress requires that the parent make a measurable or demonstrable movement toward reunification. In re M.C., 201 Ill. App. 3d 792, 798 (1990). A circuit court's finding of unfitness will not be reversed unless it is against the manifest weight of the evidence. In re A.S.B., 293 Ill. App. 3d 836, 843 (1997)

Objective evaluations of respondent with L. J.

reached the same conclusions that his caseworkers did, that he was not able to engage L. J.. Could not focus on her safety, and had difficulty empathizing with her and anticipating her emotional and physical needs. These evaluations continued to note the same problems years after respondent began receiving services designed to improve his parenting skills. From the time that L .J. was taken into care until the time that the petition for termination of respondent's parental rights was filed, respondent had over two years to prove that he could make the kind of progress that would result in the return of the child to his care. He failed to do so. Thus, the court's finding that respondent was unfit was supported by the manifest wight of the evidence.

Respondent also contends that it was against L. J.'s best interest for his parental rights to be terminated and for her to be adopted by her foster parents. The decision of wether termination of parental rights is in the best interest of child rests within the sound discretion of the court and will not be disturbed absent an abuse of that discretion. In re M.S., 302 Ill. App. 3d 998, 1003 (1999).

Respondent first argues that the court abused its discretion in refusing to grant him a continuance so that his witnesses could be present. A review of the transcript from that hearing shows that respondent did not request a continuance.

Before his attorney was allowed to withdraw from the case, the circuit court asked respondent, " You are willing to represent yourself, pro se; is that right?" Respondent answered, " Yes, I am," and the court

indicated that his attorney would be allowed to withdraw and that they would go forward with the best interest hearing. Respondent immediately began arguing his motion to vacate the court's finding that he was unfit, which the court denied. The record does not show that the court denied a request for a continuance, but instead indicates the decision to allow respondent's attorney to withdraw from the case was based on respondent's representation that he was willing to proceed with the hearing pro se.

Next, respondent argues that the circuit court failed to consider evidence showing the L. J. was of a different religion and nationality than her foster parents. Respondent fails to cite any Illinois case law to support his claim that this constitutes reversible error, and while the Juvenile Court Act of 1987 suggests that DCFS place a child, wherever possible, with a person holding the same religious belief as that of the minor, it is not mandated 705 ILCS 405/2-27(1.5) (West 1996). Furthermore, while respondent had L. J. baptized in the Methodist church and L. J.'s foster parents are Catholic, both churches are Christian denominations. Surely, the statue does not anticipate that DCFS would be required not only to attempt to place children in homes where the foster parents practice the same religion, but also in homes where the belong to the same denomination of that religion. Though respondent also claims that L. J. was placed with a family that was not of the same " nationality" (presumably, he means ethnicity, as all the parties enjoy United States citizenship), he again fails to cite any authority showing

that this constitutes reversible error.

Next, respondent contends that the circuit court would not allow him to question the State's witness with regard to the parenting ability of the foster parents. This is not supported by the record, which shows that both parties asked the witness a number of question related to the parenting skills of the foster parents.

Respondent's remaining arguments again refer to his beliefs that L. J.'s caseworkers were biased. As stated previously, we do not see any evidence of this in the record. Instead, the evidence clearly supports the circuit court's finding that it was in L. J.'s best interest for respondent's parental rights to be terminated. The evidence showed that L. J.'s strongest bond was with her foster parents, and that despite repeated attempts, respondent would not be able to improve his skills to the point that return of the child to his care would be a viable option. L. J. had already lingered in foster care placement for four years while respondent attempted to prove himself a fit parent. It was in her best interest to find that she should not have to continue to languish in the State system without a sense of permanency.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.

Hartman, J. M. with THEIS, P. J., and QUINN, J., concurring.

State Of Illinois } 0000147.2163
County of Cook} 98

In The CIRCUIT COURT OF COOK COUNTY,
ILLINOIS DEPARTMENT OF JUVENILE
JUSTICE AND CHILD PROTECTION
CHILD PROTECTION DIVISION

In The INTEREST OF No.94JA1107
Luella Joneson
(minor)

Order on Motion to Close Proceedings

THIS CAUSE coming on to be heard on the motion of the court . To close the proceedings, the parties being present or represented by their attorneys, the court having jurisdiction over the subject matter and the parties, and the court being fully advised in the premises and it being in the best interest of the minor;
The Court Finds That:

__1. The family (is/is not) in need of further monitoring by the court

__2.It (is/is not) in the best interest of the minor that this case be closed.

X 3. Adoption is completed 9101

__ 4. Court has lost jurisdiction

Entered 98COA2499
Clerk of the circuit court Jim Quinn
Aurelia Pucinski 8/20/98
Oct 26, 1988
"Appendix B-1"

IT IS THEREFORE ORDERED;

5283 __ A. The motion is denied

4259 __ B. The 405/2-25 Order of Protection is terminated.

4333 __ C. The 405/2-20 Continuance under supervision is terminated.

8001 __ D The petition is dismissed.

8002 __ E. The 405/2-24 Order of Protective Supervision is terminated, and the case is closed.

8007 X F. Wardship is terminated, guardianship is terminated, and the case is closed.

4390 __ G. This matter is continued for further status on _____ at_____ a.m./p.m. before the

4391 _ Judge 4392 __ Hearing Officer

4382 __ H. Legal Custody to stand in _____

Dated: October 20, 1998 Ent."s/ N. Malyiro" 1611

Judge NO

Aurelia Pucinski Clerk of The Circuit Court of Cook County Illinois

State of Illinois
County of Cook

In the Circuit Court of Cook County, Illinois Juvenile Justice & Child Protection Department , Juvenile Justice Division

In Re; Luella Joneson,)
) No. 94 JA 1107
A minor)

Report of Proceedings Had at the hearing of the above-entitled cause, before the Honorable Mary Mulhern, Judge of said court, on the 28th day of October, A. D. 1997.

Present: Hon. Richard A. Devine, State's Attorney of Cook County, by Frank Kosdtouras, Assistant State's Attorney, on behalf of the People;
Ms. Alice Wilson, on behalf of father, Eugene Joneson.
Patrick T. Murphy, Cook County Public Guardian, by Mr. Aaron Weiss, Assistant Public Guardian, on behalf of the minor

Karen F. Moser, C.S.R., R.P.R.
Official Court Reporter
Circuit Court of Cook

"Appendix B-2"

UNFITNESS RULING

Found in Vol 2 of 6, R 210 ln 8 -R 214 ln 24. 0

The Court: Today we're here on the case of Luella Joneson, 94JA1107, for ruling on wether or not Mr. Joneson and Ms. O'Neil are fit parents of Luella.

The state alleges that Frances O'Neil and Eugene Joneson, the mother and father of Luella, are unfit as the parents of Luella Joneson. The state has proven clearly and convincingly that Frances O'neil is unfit in violation of 750 I.L.C.S. sections 50-1D, B,C,M as to efforts and progress and in which are also violations of 705 I.L.C.S., 405/2-29

The State has also proven clearly and convincingly that Eugene Joneson has failed to make reasonable progress towards the return home of Luella since March of '95 when Luella was found to have been neglected in violation of 750 I.L.C.S. 50/1D,M.

There is no shortage of evidence of Mr. Joneson's efforts at complying with the request of his caseworkers. He did parenting skills classes . He did therapy. HE DID Counseling. He'S gone to AA and has done nearly everything tat his case workers have asked of him, and he has faithfully visited Luella almost without fail.

There is no doubt that Mr. Joneson wanted Luella returned to him but in this case his efforts have not produced progress. Let's go back to when Luella was born and see what, if any, progress had been made since that date.

Luella was born at home more than a year after

the State had filed petitions to terminate her parents' rights as to her older sisters. Luella was born at home, not at a hospital, in order to keep DCFS from finding out about her existence and removing Luella from Mr. Joneson and Ms. O"Neil's custody.

Even at Luella's arrival in this world, the parents have her born at home in order to make sure that their interests are protected not Luella's. And at this point, January 30th of 19994 when Luella was born, Mr. Joneson had been in services for at least six years with his two older daughters but that point was still unable to put a child's interest first.

Even at trial here, Mr. Joneson testified that Luella was removed from his custody not due to anything he did, but due to Ms. O'Neill's actions of abandoning her.

Mr. Joneson's inability to anticipate Luella's needs and to put her needs before his make him unable to parent and this inability has been described through out the case as being unable to read Luella's nonverbal cues. This means that Mr. Joneson cannot be relied upon to meet Luella's needs for emotional support, nurturing or sometimes even he physical safety by anticipating or recognizing risks or problems that arise. The visitation history bears this out.

As I said before, he has visited faithfully hardly ever missing visits. But there are examples of this inability to read Luella's cues through out the visitation history Ms. Pesheck, (phonetic) of the parenting assessment team, described Mr. Joneson's response t Luella crying on his lap and that response was, does the

foster mother beat you, as in appropriate. The Catholic Charities workers have described yelling and name calling by Mr. Joneson in front of his daughters at these visits and of the sometimes chaotic atmosphere at some of the visits. All of these examples bear witness to Mr. Joneson's inability to satisfy the emotional and physical needs of his daughters or of his daughter Luella.

I cannot think of another analogy, and I don't mean to trivialize this situation but what has occurred here is very similar to a person taking driver's ;education in order to learn to drive a car. A person can attend driver's ed countless times and do well on the rules of the road and on the simulated driving but to translate those skills into operating a car takes a certain ability and a person's inability to translate what they learned int exercising those skills, for instance, in the driving analogy, will almost certainly lead to disaster.

Every professional who has observed Mr. Joneson with Luella at visits , at evaluations at therapy and this includes Minna (phonetic) Green, the parenting assessment team, and the case workers all have concluded that he is unable to anticipate Luella's needs, to take care of them when they arise, and they conclude that his inability to assure that she will have the emotional and physical safety that she requires.

Mr. Joneson has been found unfit as the parent of Luella's two older sisters, Marilyn and Emily. The findings in the opinion rendered by the First District Appellate court were based on evidence of Mr. Joneson's lack of progress in parenting skills that are strikingly similar to the evidence presented in Luella's

case.

And those findings, together with the lack of progress made since Luella's birth and in spite of numerous services completed by Mr. Joneson since then, lead this Court to the conclusion that there has not been measurable movement by Mr. Joneson toward the goal of return home which is of such quality I would be able to return Luella to his custody in the near future And that concludes my ruling on Luella Joneson.

State of Illinois
County of Cook

In the Circuit Court of Cook County, Illinois Juvenile Justice & Child Protection Department , Juvenile Justice Division

In Re; Luella Joneson,)
) No. 94 JA 1107
A minor)

Report of Proceedings Had at the hearing of the above-entitled cause, before the Honorable Mary Mulhern, Judge of said court, on the 7th day of April, A. D. 1998.

Present: Hon. Richard A. Devine, State's Attorney of Cook County, by Frank Kosdtouras, Assistant State's Attorney, on behalf of the People;
Patrick T. Murphy, Cook County Public Guardian, by Mr. Aaron Weiss, Assistant Public Guardian, on behalf of the minor

Sandra Battaglia
Official Court Reporter
Circuit Court of Cook
C.S.R. #084-003168

Filed
Clerk of the Circuit Court
Aurelia Pucinski
November 17, 1998

"Appendix B-3"

Best Interest Ruling

Found in Volume 1 of 1, November 17th, 1998, R 51 ln 6-R 52 ln 9) of the appellate court 1st distrit

I made the finding in December that both parents were not fit to care for Luella based on failure to make reasonable progress that would led me to believe that it was reasonable within the near future to return Luella to either one of them.

I believe that the evidence today convinces me that it is in Luella's best interest to have a permanent home with the Villanuevas. The testimony is clear that she is bonded to them; that she has lived there most of her life, from almost at birth until she was four years—until now when she is four; and that to remove her would be very detrimental since she views this as being her primary care-giving family; the fact that she is a happy, healthy four year old who is educationally and behaviorally appropriate indicates that her care for four years has been very good and that her needs are met. She is in an adoptive home.

And that at this age, I believe that due to the bond that she has with her foster parents, that termination permitting her to be adopted by the Villanuevas is in her best interest.

And so, Mr. Joneson, I have to enter an order today that terminates you rights as well as Frances O'neil's with regard to Luella.

Illinois Supreme Court
Juleann Hornyak, clerk
Supreme Court Building
Springfield, Illinois 62701
(217) 782-2035

January 29, 2001

Mr. Eugene Joneson
2043 West Dickens
Chicago, Il. 60647

No. 90401- In re Luella J., a Minor (People State of Illinois, respondent, v. Eugene J., petitioner)
Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on February 20, 2001.

"Appendix C"

Supreme Court of Illinois
Supreme Court Building
Springfield 62701

Juleann Hornyak
Clerk of the court
(217) 782-2035

Telecommunications Device
for the deaf
(217) 524-8132

First District Office
20th floor
160 N. LaSalle St
Chicago 60601
(312) 793-1332

Telecommunications Device
For the deaf
(217) 793-1333

March 15, 2001

Mr. Eugene Joneson
11732 South Prairie
Chicago, Il 60628

Today The Following Order Was Entered :

No. 90401- In re Luella J., a Minor (People State of Illinois, respondent, v. Eugene J., petitioner

Motion by petitioner, pro se, for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Motion denied.

Order entered by the Court.

Mandate has issued forthwith to the Appellate Court, First District

cc: Ms. Cheryl D. Cesario
Hon. Richard A. Devine
Ms. Jane Burwell
"Appendix D"

BEST AVAILABLE COPY

IN THE INTEREST	)
OF:	)**Appeal from The Circuit**
LUELLA JONESON	) **Court of Cook County**
No 94JA1107	)
(Minor-Respondent-A	**)ppellee,**
	) **Appellate No. 98-3336**
PEOPLE OF THE	)
STATE OF ILLINOIS	)
Petitioner-Appellee	)
V.	)
	)
EUGENE JONESON	) **Mary Mulhern,**
)Respondent-Apellant	) **Judge Residing.**

Order

The motion of Eugene Joneson for reinstatement of visitation is denied in toto

EUGENE JONESON, Pro Se
2043 W. Dickens
Illinois 60647
telephone 773-645-9695

Chicago,

Justice - P.J. Theis
Justice J. Hartman
Justice J. Quinn

"Appendix E"

Father motions the court for return of visitation for Luella Joneson and to expand current communication with daughter which is currently through letters. This would include telephone calls. DCFS is currently forwarding all letters to the foster family. Father has not been receiving responses that indicated Luella has received anything. Repeated attempts at asking for some return phone calls or a reply letter have been ignored. Luella is not old enough to do either so it is important that her foster parents help her do one or the other. The father, Eugene Joneson and appellant, believes that no contact for Luella Joneson with her birth father is not good for her emotional, moral and mental health. Father has visited her for over four years without missing visits.(Father also delivered Luella at home and was the first person she saw when she was born). As the Illinois Department of Family and Children Services through Catholic Charities is no longer wanting or willing to provide services for his family, the father believes he should be allowed to continue this contact by writing and phoning Luella directly and visiting at a location agreed upon by all with his family therapist present.

Father has motioned trial court, Judge Mulhern presiding, for return of visitation, phone calls or letters without the interference of the Catholic Charities agency and the participation of his own family therapist on August 6th ,1998. It was dismissed as the case was in appellate court and considered under their jurisdiction.

In the instant case the father is appealing the decision of the trial court about visitation where during the best interest hearing of Luella (4/7/98) the trial court Judge Mulhern left visitation up to the discretion of the foster parents through the use of the agency Catholic Charities When the adoption was finalized in may of 1998 all services to Mr. Joneson were discontinued by Catholic Charities including visitation. This meant no visitation would be provided by the agency any more. Even under these conditions , with the court appointed agency no !onger providing services, the petition for reinstatement of visitation (August of 1998) was denied, because the case was considered under appellate jurisdiction. This also shows a bias of the trial court or a serious contradiction of precedence despite previous rulings on this case of two other trial court Judges on jurisdiction and the relationship to visitation while appellate court or higher appeals are pending..

It was argued in the motion on August 6th, 1998 that previous decisions of the trial court indicated the trial court had jurisdiction over visitation while appeals existed in the appellate court. The first circumstance was when the trial court had ruled in father's favor for dismissal of unfitness for older sibling sisters on June 25th,1996 and the dismissal was being appealed in the appellate court. The motion for increased visitation filed August 14th, 1995 was denied by trial court (Judge Szwed ruling), because it was ruled at that time the trial court had: 1. jurisdiction to make decisions about visitation while unfitness was being appealed in the appellate court, and 2. to conform to the decision that

the Juvenile court does not have Jurisdiction to alter the status quo of the court. This was the mandatory court procedure of allowing only one visit per month for visitation during adoption proceedings.

Other rulings and the 2nd circumstance on visitation, held on September 16th, 1997, by Judge Riley (termination of visitation for older sibling sisters) were still considered part of the trial courts jurisdiction even though this case was in appeal to the Illinois Supreme Court. [1]

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[1] Riley also disturbed the status quo of maintaining mandatory once a month visits by terminating visits of the two older sisters due to: 1. the length of time case was in court 2.caseworker testimony for best interests of children because they were experiencing anxiety due to the adoption proceedings. and 3.from a court ordered bonding assessment that said Mr. Joneson was not in contact with his daughter's emotional needs. Appellant believes that all these reasons were a violation of Due Process. And Illinois State Statues. The extreme bias of the new trial court, (by Judge Riley) ruling on visitation of the older sibling sisters) is shown when she stated "I am not doubting this father's love for his children," but " this smacks to me of things you see in stalkers" and " I find the fact that this man is standing before me is like a King Solomon thing" (vol 4 of 5, r105) No evidence of this type of endangerment was ever presented by appellees. This attitude seemed typical of the court in its rulings with Mr. Joneson and his family.

Charities only if the foster parents chose to do so as the court ruled that it was in Luella's Joneson best interest to be adopted by the foster family. But Catholic Charities decided separately to discontinue visits thereafter because the adoption had been completed in the trial court. Through repeated phone calls to all levels of supervisors of Catholic Charities, Mr. Joneson contacted Doris Tribbit of Catholic Charities who said she would forward any letters to all the children.[2] But she made it clear that all visits were terminated because the adoptions had been finalized and Catholic Charities agency's policy did not provide visitation after a adoption order had been entered.

The above rulings by Judge Mulhern has virtually left all visitation in limbo until appealed through the appellate court, a serious abuse to the minor's mental and emotional health. Luella Joneson was never told she would not be seeing her father for a long period of time. The foster parents have not made a good effort or decision in not allowing contact between father and daughter to occur. They have returned no response to all the letters he has written requesting some type of contact with his daughter .

United States Constitutional Law reads " When an unwed father demonstrates a full commitment to the

---

[2] (There are also two older sibling sisters in another foster home going through an appellate appeal process on the termination of parental rights.)

responsibilities of parenthood by "com[ing] forward to participate in the rearing of his child, he therefore has a liberty interest, entitled to protection under the Due Process Clause of the Fourteenth Amendment In *Caban v Mohammet, 441 U.S. supra at 392* his interest in personal contact with his children acquires substantial protection under the Due Process *Clause Lehr v Robertson,* 463 U.S. *supra*, at 261

Father's petition for notice to appeal to the appellate court of Illinois was filed on September 4th, 1998. Just assembling the appellate record for evidence to refer to for this petition and the brief is taking additional time due to the complications of filing two briefs approximately at the same time. One brief is for Luella Joneson who is an only child in a separate foster home and another brief is for the two older sibling sisters who are in a different foster home. The docketing number was not obtained until the beginning of October, 1998..

But Luella Joneson should not have to wait any longer to see her birth father, Mr. Joneson. Or he to see her. It is not good for her mental health to be completely cutoff from seeing her birth father while appeals are being filed. It has been over 8 months since the birth father has seen his daughter, nor has he been able to talk with her in any way due to the trial court's custody decision on visitation and jurisdiction and Catholic Charities agency policies. This is creating a situation of neglect by the state of Illinois of Father's family and thus and including daughter Luella.

. This relationship between Mr. Joneson and his

daughter Luella should be maintained. The appellant and father has not missed a visit with his daughter in over 4 years and it is an injustice to his family if visitation is denied again due to Illinois state department policy or foster parents wishes. In *Michael H.v.Gerald D.*491 U.S.110,145 it reads the appropriate level of scrutiny in determining wether statue violates due process is rational basis test when statue under consideration does not affect fundamental constitutional right; courts will subject legislation to strict scrutiny if law impinges upon fundamental right U.S.C.A Const Amend 14
In Harris v. Manor Healthcare Corp. 489 N.E.2d 1374,1375 It also reads we first ask whether the person claiming constitutional protection has an interest that the Constitution recognizes; if we find that he or she does, we next consider the State's interest in limiting the extent of the procedures that will attend the deprivation of that interest .In *e.g. Logan v. Zimmerman Brush Co.* 455 U.S.422,428 Visitation should be maintained until all parental rights are severed by the court by a mandate because all APPEALS ARE EXHAUSTED and guided by the endangerment standard. It should not be determined by the prospective adoptive parents as to what is in the best interest o f Luella. Father, appellant, believes that by allowing the foster parents to deny any future contact with Luella by her birth father, it prevents her from maintaining or continuing a healthy mental relationship with him . This in itself is violating the minimum parenting requirements the state is trying so hard to preserve. It is also detrimental because it allows bonding to occur which is deceitful and hurtful to Luella

Joneson in light of the fact that the appellate court could still reverse the trial court decisions on the unfitness of Mr. Joneson or the best interest of Luella Joneson.

In all the rulings of visitation on L J, there never was any reason given to stop visitation due to a endangerment standard. There has been no court mandated issued indicating unfitness. The trial court was bias in favor of its ruling for the best interest of L. J. and did not consider maintaining the status quo of one visit per month until all appeals are exhausted.

The court also cited *In re Workman* 390 N.E.2d 900 for the proposition that paragraph 1521 of the Illinois Adoption Act must be read as providing that an interim order terminating parental rights severs the parent-child relationship after the expiration of petitioner's right to appeal the order. Appellant understands this to be read that visitation rights should be allowable until all appeals are exhausted.

This petition for return of visitation is not only being presented as truly in the best interests for Luella Joneson but with respect to the endangerment standard. And that there is no endangerment for her at any future visits or at any other times in the past This motion is also justifiable by the United States Constitution Article V: which states nor shall any person be deprived of life, or liberty without the due process of law. Again this adoption has not been mandated as finalized and all appeals have not been exhausted by father appellant.

.. Evidence that was given was by the caseworker ,Christine Foley, at the best interests hearing as to why Mr. Joneson should not maintain custody of

his daughter Luella was that Luella when she was younger would cry when taken from the foster parents when she would go to visits. Caseworker Christine Foley denied this crying had anything to do with separation anxiety which all children go through at the age of 1-3 years old. (This was about the age of Luella when a lot of this crying occurred) But on the other hand she felt that Mr. Joneson was totally out of context when he related Luella's crying at the beginning of visits to some kind of physical punishment that she might be getting at home as a possible reason. Catholic Charities, through their caseworker, Julie Linkon Yalowitz, has had the chance to alleviate any problems Luella has had about visitation such as anxiety about leaving her foster parents and the long drive to visits.

New substantial evidence indicates that the caseworker, Christine Foley, who testified at Luella's unfitness and best interest hearing has perjured herself with regards to her testimony at providing services. This should cast serious doubt or less weight on the caseworker's testimony about Mr. Joneson's daughter Luella. Evaluations to have been completed, as testified by the caseworkers's, were never completed in its entirety. (On the last three pages of the amended appellate brief of older sisters) The caseworker Christine Foley never completed the forms necessary for it. She thus lied or perjured herself in court when she said that this evaluation for the anxiety children had about adoption and their position on it with regards to their father was completed Again this should caste serious doubt on any testimony she has made. Courts must be

cognizant of incentive to perjury in cases which adults who have interest in the outcome of visitation or custody disputes in determining applicability of spontaneous declaration hearsay exception; court must consider not only nature of the action, but also the interests of parties (559 N.E.2d 780) As this question of wether the therapy evaluation was completed was asked twice in court , in two separate hearings, and the answers given as "yes"it indicates an act of willful perjury.

The foster parents have driven with Luella to visits before. As to reasons why they are not cooperating with visits for Luella, it could be because it was left up to their decision and Catholic Charities would not provide the services. Other possibilities could be that 1. they do not want to provide the transportation or 2.since both of them work they do not have enough time for Luella's visitation. Luella Joneson sits in day care many a day while her foster parents work. Certainly one day out of the month could be found out of the month to hold a visit for an hour or two ! Or if at the least , they should be attempting to provide some type of phone contact for her.

The Father, Eugene Joneson , would drive to a closer destination as determined through discussion and mediation with his family therapist and Mr. Joneson and foster family to alleviate any inconveniences .with regards to transportation and visitation. Father is also willing to provide through his therapist, therapy services for Luella with regards to confused relationships or anxiety at visits, because of adoption procedures. Luella was not considered old enough for these services

when Catholic Charities was providing them, but is now reaching that age level of understanding.

. Therapy should also be provided because excess pressure form the discussion of this topic through foster parents and Catholic Charities workers surely has increased this anxiety level for my daughter considerably. This could make visits very uncomfortable for her. Especially when visits have been cut off now for more than six months due to court continuances and changes in jurisdiction which has delayed the return of visitation of Luella with her birth father.

Also, Mr. Joneson was not allowed to mention the subject of return home or adoption to his daughter Luella because of the emotional conflict it could provoke. The father is sure this subject has been explained to her by the foster family.,but how is beyond his knowledge. The father believes it is in the best interest of Luella to understand both sides of the return home process and also believes that it is not a severe endangerment to Luella Joneson's mental ,emotional and moral health. It is also not justifiable for her emotional and mental health to allow therapy where all parties views, opinions, and possibilities are not discussed. Catholic Charities abused their discretion by allowing this to be only a one sided point of view. It certainly could not be considered in the best interest of Luella It must be remembered that the foster parents have not responded to any letters the father has written for Luella or returned any requested telephone calls. That is what a great injustice done to Luella's emotional and mental health is.

Again the only reason given for the discontinuance of the visits by Catholic Charities with Luella and her father were that the case had been finalized as Mr. Joneson's rights had been terminated at the trial level. The court decided that the foster parents who were now considered to be the adoptive parents of Luella and were to decide if she would still be able to see her father. In fact the main argument used for discontinuance of visits was based solely on the judgement of the best interest hearing and that previously father was found to be unfit.

The reasons for being unfit were that the father: 1. was not able to set appropriate limits for his daughter and 2. He was not in tune to her emotional bonding.

Caseworkers had never canceled a visit with Mr. Joneson nor was he considered a danger to them or anyone else. Caseworkers never felt threatened at visits or felt the children were in danger while they were supervising them. But they did not feel comfortable with Mr. Joneson in an unsupervised condition and would fear for the safety of the children if it did occur. Because he could not convince the caseworkers that he had adequate parenting skills that would not put the children in danger because of inappropriate limit setting he was unable to make reasonable progress for return home of his daughter. Possibly because of these reasons no other consideration was given to maintaining contact with Luella while due process occurred in the appellate courts. This even though Luella has never been severely hurt emotionally, mentally, morally or physically at visits for the entire 4 years of visitation. This should be

considered meeting the minimum parenting standards as set by the 89 Illinois Administrative code Chapter 111,Sec.304.2 [3] This discontinuance of visits certainly cannot be considered as such. In Illinois Family Law and Practice, annotation 9:368 it states that any restriction of visitation must be based on the endangerment standard rather than the best interest of the child. Also cited in Woods v Woods 498 NE2d 906. The court is in error where it restricts a parent's visitation rights where the court does not make the requisite finding that the

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[3]

89 Illinois Administrative Code Chapter 111, Sec. 304.2 " Minimum parenting standards" means that a parent or other person responsible of the child's welfare sees the child is adequately fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from sever physical, mental and emotional harm, and provided with necessary medical care and education required by law. A parent who has abandoned a child, deserted a child for three months, or failed to demonstrate an interest in a newborn child for 30 days after birth is deemed to have failed to have met the minimum parenting standards.. In addition, a parent who is addicted to alcohol as defined in the Alcoholism and Intoxication Treatment Act or who is a drug addict, as defined in the Dangerous Drug Abuse Act, and who has consistently failed to cooperate in a rehabilitative program for a period of at least twelve moths is deemed to have failed to have met the minimum parenting standards unless the child's safety and well-being have been ensured despite the parent's addiction

visitation will seriously endanger the child's physical, mental , moral or emotional health but, rather, the court finds that the restriction in visitation is in the best interests of the children. This indicates that with regards to the type of bonding father has with his children or parenting skills that it should not be the determining factor about visitation unless it is severely endangering the children. The law also reads that the inability to nurture is not the proper statutory bases for the removal of children in re SJ 598 NE2d at 477. The lack of what DCFS seems satisfactorily interaction between parent and child is not justification for termination of parental rights. This includes visitation .

Several reports were made with regards to the bonding Luella had with her birth father, Mr. Joneson, as with regards to services to be offered for the Joneson Family. The first report done was completed by Amy Anson through Michael Reese Hospital. This report indicated that Luella is able to use her biological father when she is distressed, suggesting that he is a familiar adult who she experiences as non-punitive and calming. She does not demonstrate the type of effective attachment to Mr. Joneson that she does with her foster parents, nor is such a relationship expectable, given the one hour per week visitation that is provided. None the less, Luella appears to feel comfortable with her biological father, and explores in his presence. Dyadic therapy is strongly recommended, and until such dyadic treatment has been established, visitation should be continued to be supervised. It also recommends that should Luella ber adopted at some point in the future by

the Villanueva family, that she continue to have regular contact with her biological father. Judge Mulhern was aware of this assessment, but still left visitation up to the discretion of the prospective adoptive parents.

The second was a court ordered parenting assessment done to suggest areas Mt. Joneson could improve his parenting skills in and which included the type of bonding Luella was reported to have with her father. This was exhibited through a parenting assessment team report. The parenting assessment also used many statements that were never recorded in an interview so they could be represented to the court in exact interpretation. This assessment has committed many violations of due process and should be reviewed carefully for many evidentiary errors have been committed. These statements made without supporting evidence were specifically brought out in the post trial motions on August 6th, 1998 to Judge Mulhern. Father, appellant, believes these statements have seriously biased the court. Examples of these statements used in the parenting assessment are: 1. About A story relayed to evaluator about a three year old who tested his patience and got a smack from him 2 (vol.2 of 5,c52) 2. One time at watching a 2 year old he had difficulty at containing his own anger at the child. (Vol 2 of 5,c54) 3. Mr. Joneson states that he is desirous of gaining custody of his three daughters that are more reflective of his emotional needs than theirs(vol 2 of 5,c60). This was the opinion of the evaluator but reports it as if I had said it. 4. The confusion of the evaluator associating father's emotional needs as a parent(and father) being met as the

same as those for meeting adult intimacy needs. (Vol 2 of 5,c62) and 5 Mt. Joneson harbors strong hopes and expectations that his daughter will be there to care for him should they returned to his care (vol 2 of 5 ,c52) 6. It also concluded that there was not a therapeutic intervention that would improve his parenting. These statements are false and adamantly refuted by appellant

Illinois Family Law states that the appellant must show that the incompetent evidence caused some prejudice and that the finder of fact relied upon it In re Best v. Best, 344 S.E.2d 363 (1986) This is certainly valid in the instant case for this information was specifically used in the termination of parental rights and probably influenced the judges and foster parents decision on visitation. (Vol 4 of 5,r55-57)

. If the reports of the agency and the parenting assessment team are considered, these violations of due process should be considered as bias and perjerous proof of the agency's only goal and objective of adoption.

Father also believes that the best interest standard was being put first before the final judgement on unfitness by the agency Catholic Charities to satisfy its own agency goals.. In fact the Guardian Ad Litem's attorney, Pam Coffey, for Luella specifically asked that judgement for visitation be passed strictly on what is the best interest of this child. cited in Woods v Woods 498 NE2d 906. The court is in error where it restricts a parent's visitation rights where the court does not make the requisite finding that the visitation will seriously endanger the child's physical, mental , moral or

emotional health but, rather, the court finds that the restriction in visitation is in the best interests of the children The overbearing atmosphere of recently unsuccessful D.C.F.S cases[4], new budget cuts in the agency, the length of time case was in care and the inexperience of caseworkers and providers of service made the decisions of both the agency and those providers associated with them in favor of no return home for all children in care and thus the loss of visitation. This the father also believes resulted in the cancellation of all visitation before all appeals of termination of parental rights are exhausted.

.. Father has not been allowed to call his daughter Luella at the foster home, to talk to her when the agency was supervising this case and continues till now. The appellant father asks the court if future contact will be allowed with Luella through telephone calls until all appeals have been exhausted. Especially since Luella is still not old enough to read. This will be a real way for her and I to know we have contacted each other and for the father to know she is alright. Father also asks for return of visitation but with an agency other than Catholic Charities..

The father does have a professional family

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[4] Another major factor that affected the decision making process of the judge was the public pressure from two currently unpopular D.C.F.S. cases where children were returned home to their parents and than subsequently killed. This was the Amanda Wallace Case And the Frank Torres case.

therapist he has selected that he prefers to have all visits to help him with his parenting skills and if needed or to witness his contact with his children. His credentials are included in this Motion. {Appellants motion to have therapist was also denied with the return of visitation on the trial court level}. I believe it is in the best interests of Luella to continue to see her father and she is not in danger. I have never abused them physically or mentally at visits. Never once were my visits canceled in 4 years because I was out of control. This indicates I have met the minimum parenting standards and also that my daughter is not in danger when I visit her. I believe that any anxiety she has exhibited at visits was due to normal anxiety experienced for her age group..

Once again ,father pleads for return of visitation through an agency other than Catholic Charities and also to include the involvement of My therapist John Lietzau.. I the father of Luella Joneson believe that as a family, father and daughters (she has two older sisters), we have developed a substantial relationship over this period of time and both the rights and bests interests of our family unit should not be abused any longer through continuing the termination of visits until all appeals are exhausted.. I believe this is a liberty interest entitled to protection under the due Process Clause of the 14th Amendment.

Sixth Division
July 23, 1999

Notice
the text of this order may be changed or corrected prior to the time for filing of a petition for Rehearing or the disposition of the same.

No. 1-98-0774

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re F. O. and E.O, Minors	)	Appeal from the Circuit
	)	Court of Cook County
(The people of the state	)	
of Illinois	)	
Petitioners-appellees,	)	No. 86 J 04662
	)	
Respondent- Appellant	)	

Order

Following a dispositional hearing on December 16, 1997, the circuit court terminated the parental rights of respondent Eugene J. to his two children E. E. and F.O. also known as M.O. Respondent has appealed

"Appendix F"

pro se, contending that the court's "best interests' determination was improper on procedural grounds and against the manifest weight of the evidence.

This matter was before this court on a previous appeal by the Cook County Public Guardian and the State from the dismissal of petitions requesting the appointment of a guardian with the right to consent to the minors' adoption. In re F.O and E.O. No. 1-95-2841 (1997) (unpublished order under supreme Court Rule 23). This court reversed, finding that there was clear and convincing evidence of respondent's lack of reasonable progress toward reunification due mainly to his chronic personality disorder, and remanded the matter to the circuit court. In re F.O. and E.O. No. 1-95-2841, at 11. We also found that there was no basis in the record to support respondent's contentions that he was thwarted in his efforts towards reunification by the caseworkers and others assigned to him. In re F.O. and E.O., No. 1-95-2841, at 11.

Because the facts are described in great detail in the previous appeal, we shall only refer to such facts as necessary to determine the merits of respondent's arguments. Briefly stated, the record shows the E.O. was born on December 3, 1985, and she was adjudicated a ward of the court on March 24, 1987, after a finding of neglect. Her sister, F.O. was born on August 10, 1987, and adjudicated a ward of the court on May 13, 1988, on a similar finding. Each girl had been abandoned by her mother in a public place shortly after birth. They were living together in a foster home. On December 2, 1992, supplemental petitions for the

appointment of a guardian with the right to consent to adoption were filed on behalf of the girls and named respondent as the father. Various witnesses testified as to respondent's lack of progress towards reunification with the girls and his mental disorder which made him unfit to perform parental responsibilities. Witnesses testified on respondent's behalf that he had participated in an AA program and maintained his sobriety for a significant amount of time. Respondent testified that he had a stable household income and that he cooperated with the service plan and services recommended by the social workers assigned to his case. The circuit court found that the state had not met its burden by clear and convincing evidence and dismissed the petition. This court reversed. finding respondent was proven to be unfit, and we remanded the cause for further proceedings. Respondent subsequently filed a petition in the supreme court for leave to appeal which was denied on October 1, 1997.

While respondent's petition was pending in the supreme court, the Public Guardian filed a motion to terminate visits between respondent and the girls. A hearing was held on September 15, 1997. Respondent objected on the grounds that an assessment completed two years earlier had suggested that contact between respondent and the girls continue. The assessment also recommended counseling, but there had been no counseling done as of the date of the hearing.

Christine Foley, who had been the girls' caseworker from Catholic Charities since February 1995, testified that visits were suspended on August

14, 1997, because they were disruptive to the girls and also because the girls indicated that they did not want to visit with respondent anymore. She also testified that F.O. had been in foster care for eight- and one-half years, E.O. had been in foster care for nine- and one-half years. Neither child felt any attachment to respondent. Respondent testified that he was an alcoholic in remission and that he had a mild personality disorder. The court found that the visits were not in the girl's best interests and terminated them.

On December 16, 1997, a best interests hearing on weather to terminate respondent's parental rights was held. Respondent appeared in court with an attorney he had met with the previous weekend. When they arrived at court, respondent gave the attorney all of the information that he had in the case. The attorney requested a continuance, which was denied by the court on the basis that respondent had been informed on numerous prior occasions that there would be no more continuances granted. The attorney did not represent respondent, and the respondent proceeded in the hearing pro se.

Christine Foley testified that E.O. had been in foster care for 11 years, F. O. had been in foster care for 10 years, and both were in the same foster home. Both children were very attached to the foster parents, called them 'mom" and "dad," and both children indicated that they wanted to be adopted by the foster parents. Foley indicated that it would be in the children's best interests to remain with their foster parents because they had provided a stable, loving

home in which the children had lived for many years. Both children stated that they did not want any contact with respondent and that they were uncomfortable with him.

Respondent testified that his parental rights should not be terminated because he had visited the children for 10 to 12 years, they had been communicating and they got along well. He also stated that the evidence indicated that there was nothing wrong with him. He thought that it was in the children's best interest to remain with the foster parents but that his rights should not be terminated.

The court found that the evidence was clear and convincing that it was in the children's best interest to have a guardian appointed with the right to consent to their adoption. The court noted that the children had spent almost their entire lives in that foster home and the effect of removing them from that home and family would be devastating . The court also noted that respondent also considered it to be in the children's best interests to remain with the foster family and terminated respondent's parental rights to E.O. and F.O..

In this pro se appeal, respondent, first contends that the trial court's best interests determination and the termination of his parental rights was improper on procedural grounds. He argues that the trial court improperly terminated visitation while his petition for leave to appeal was pending in the supreme court; that the trial court improperly finalized the adoption during the pendency of the termination of parental rights

appeal to this court; and that the trial court erroneously failed to grant respondent's motion for a continuance on the date of the termination hearing, resulting in substantial prejudice.

We first note that any arguments in respondent's brief and argument relating to the unfitness proceedings were disposed of in the previous appeal to this court. Therefore, such arguments are governed by the doctrine of collateral estoppel, and we decline to review them again. See Kramer v. Dirksen, 296 Ill. App. 3d 819,822 (1998) (collateral estoppel precludes a party from relitigating issues decided in an earlier proceeding).

We also decline to address any arguments relating to the termination of visitation hearing. That hearing was held on September 15, 1997, and respondent did not file an appeal from that determination. Jurisdiction to consider errors arising under a particular judgment of the trial court is conferred on the appellate court by the timely filing of a notice to appeal. 155 Ill. 2d R. 301. If a party fails to appeal from a judgment, this court has no authority to review a claim of error. People v. Morrison, 298 Ill. App. 3d 241, 244 (1988). We will therefore confine our discussion to those arguments which arise from the December 16, 1997, parental rights' termination hearing.

Respondent's first argument is that the trial court improperly finalized the children's adoptions during the pendency of his appeal to the court on the issue of termination of his parental rights Respondent

does not present any evidence to this court that the children were in fact adopted or that he filed for a stay of the adoption pending appeal. Since no court stayed the enforcement of the prior order pending on appeal (In re A.J., 269 Ill. App. 3d 824,830 (1994), we find that the trial court did not err in allowing the appointed guardian to consent to adoption of E.O. and F.O. and then proceeding on those adoptions.

Respondent nest argues that the trial court's failure to grant his motion for continuance at the termination of rights hearing substantially prejudiced him. He claims that only the public defender's office was familiar with the case and that office terminated its representation of him because he could afford a private attorney who was familiar with the case, and when he brought the new attorney to the hearing, counsel should have been granted a continuance.

The decision to grant or deny a motion for continuance lies within the sound discretion of the trial court and such a motion is considered in light of the diligence shown on the part of the movant. People v. West, 137 Ill. 2d 558,589 (1990). Here, respondent's representation by the public defender's office was terminated because he could afford private counsel. Respondent does not give any explanation as to why he waited until the weekend before the scheduled hearing to consult with a new attorney. Nor does he offer any explanation as to why he did not give all of the records that he had in his possession to that attorney until the hearing, Respondent does not dispute that he was told by the court on prior dates that there would be no

further continuances. Therefore, we find that the trial court did not abuse its discretion in denying respondent's motion for a continuance.

Respondent next contends that the order terminating his parental rights was against the manifest weight of the evidence. He makes several arguments in support of that contention. He argues that the court's termination of his parental rights was improperly based on evidence of his mental illness or disability rather than his failure to make reasonable progress toward the return of his children; that the trial court improperly delegated its power to decide the issue of child custody to an independent investigator or mental health professional; that there was no clear and convincing evidence of failure to make reasonable progress but that there was evidence that two caseworkers lied under oath; that he did prove that there was reasonable progress towards return of his children and that the caseworkers interfered with his efforts; that the trial judge was biased in favor of the state and the assessment team; that the two children were never examined on the record as to their wishes concerning living with or visiting respondent; that his free speech rights were repeatedly violated; that his right to freedom of religion was manipulated in favor of the religion of his children's foster parents; that it was never proven that he ever physically or emotionally abused or abandoned the children; that it was not in the children's best interests to be permanently cut off from him through adoption; and that his ties to the children should not be irrevocably cut off when there had been constant

contact of a positive nature for 12 years.

A court may terminate a parent's rights where it finds, based on clear and convincing evidence, that the parent is an "unfit person" In re A.J., 269 Ill. App.. 3d at 827. Once a court finds a parent unfit, then parental rights can be terminated only if the court additionally finds that it is in the best interests of the children for that to occur. In re S.H. 284 Ill, App. 3d 392, 401 (1996). A trial court's finding that termination is in the children's best interests will not be reversed unless it is contrary to the manifest weight of the evidence. In re S. H. , 284 Ill. App. 3d at 401. For a finding to be against the manifest weight of the evidence, the opposite result must be clearly evident from a review of the record. In A.J. 269 Ill. App. 3d at 828. Courts must not allow children to live indefinitely with the lack of permanence inherent in foster homes. In re C.C., 299 Ill. App. 3d at 830.

At the time of the termination of parental rights hearing on December 16, 1997, E.O. was 12 years old and F.O. was 10 years old. Both children had been in their foster homes since they were infants. Although between 10 and 12 years had elapsed, respondent wan not close to being able to provide for his children's needs. While he was financially able to provide for them, he was unable to provide them with the emotional stability and necessary parenting skills. Respondent completed parenting classes, yet was unable to adequately supervise the children even in supervised visits, Neither child had a parent-child relationship with respondent. Both expressed

repeatedly over at least a two year period that they wished to be adopted and that they did not want any contact with respondent. Respondent's arguments have no support in the record. Therefore, we find the court did not err in terminating respondent's parental rights, and its judgment was not against the manifest weight of the evidence.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.

CAMPBELL, P.J. with ZWICK, J., and QUINN, J., concurring.